

Wednesday, 28 August, 1946.

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INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Chambers of the Tribunal  
War Ministry Building  
Tokyo, Japan.

PROCEEDINGS IN CHAMBERS

On an application for leave  
to have the evidence in Chief of Admiral James  
O. Richardson, a witness for the Prosecution,  
presented in the form of a prepared statement  
instead of by oral examination.

Before:

HON. SIR WILLIAM WEBB,  
President of the Tribunal and  
Member from the Commonwealth  
of Australia.

Reported by:

John J. Smith  
Official Court Reporter  
IMTFE

Appearances:

For the Prosecution Section:

BRIGADIER R. H. QUILLIAM, Associate  
Counsel, acting on behalf of  
New Zealand

CAPTAIN JAMES J. ROBINSON  
MR. SOLIS HORWITZ

For the Defense Section:

MR. WILLIAM LOGAN, JR., Counsel for the  
Accused, KIDO, Koichi  
MR. MICHAEL LEVIN, Counsel for the  
Accused SUZUKI, Teiichi  
MR. JOHN G. BRANNON, Counsel for the  
Accused NAGANO, Osami

MR. T. OKAMOTO, Counsel for the  
Accused MINAMI, Jiro  
MR. GEORGE F. BLEWETT

For the Office of the General Secretary, IMTTF

EDWARD H. DELL, Judge,  
Legal Adviser to the Secretariat,  
MR. G. WALTER BOWMAN,  
Clerk of the Court  
MR. C. A. MANTZ,  
Deputy Clerk of the Court.

The proceedings were begun at 0900.

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THE PRESIDENT: This is Paper 391 - an application for leave to have the evidence in chief of Admiral James O. Richardson, a witness for the prosecution, presented in the form of a prepared statement instead of by oral examination.

BRIGADIER QUILLIAM: Captain Robinson appears in support of the application, and the grounds are stated in the affidavit attached to the application. Do you wish me to read it, sir?

THE PRESIDENT: It is short. I better read it, but you can state it briefly.

BRIGADIER QUILLIAM: It shows that Admiral Richardson, a high ranking admiral in the United States Navy of long experience, is to give expert evidence at the trial. He has made a special investigation in order that he can give that evidence, and has written a report showing the results of his investigation.

It is submitted that this application is similar to an application with respect to which you made an order a short time ago, sir. We suggest that a similar order should be made, including in it the fact that a copy of the statement be

*Rec'd listed in  
the 18 Oct #6  
para 2 (B)*

Attached are 3 corrected pages for the  
Proceedings in Chambers of Wednesday 28 August  
1946 and are to replace the pages of the same  
number in copy previously delivered.

*Aug 28, 1946  
not yet  
received*

given in advance to the defense.

There was some discussion which took place yesterday with the attorneys for the defense, at the suggestion of Mr. Logan, who joined in the conference. We discussed the situation fully, and they decided after the hearing that they could not consent to it, and we were unsuccessful.

Captain Robinson saw Mr. Logan and showed him a rough draft of the statement of Admiral Richardson's evidence, but, as I say, we were not successful.

It is difficult for the prosecution to see how this matter can be distinguished from the previous matter before your Honor. It is true that the evidence will not be of the same length. It is true also that there will not be the same amount of statistical matter, but, in particular, we suggest that the case is on all fours with the previous application.

THE PRESIDENT: Will there be many documents?

BRIGADIER QUILLIAM: I fear there will be a number, sir. Perhaps Captain Robinson can advise us on that.

CAPTAIN ROBINSON: There will be about fifteen -- from twelve to fifteen.



BRIGADIER QUILLIAM: We think it is unfortunate that in the case of a man of the Admiral's high standing that unnecessary time should be taken up, and perhaps there will be confusion in the translations and statistical information. We believe we should not be compelled to observe a technical rule as to the giving of oral testimony. Those are our grounds.

MR. LOGAN: If the Court please, we believe that there is a decided distinction between this application and the other one. In the first place, we oppose this general procedure on the ground that, in accordance with good practice, it is not proper to permit a man to make a statement and then read the statement in court.

THE PRESIDENT: Is there very much distinction between this case and the Liebert case, Mr. Logan?

MR. LOGAN: I insist that there is. Mr. Liebert's testimony and report covered approximately 150 pages. I spoke with Captain Robinson and Mr. Quilliam yesterday, and saw the rough draft of the statement and what it contained, and I found it a very short report. It contains no extensive tables or statistical matter which would require

I only looked at it for about five minutes. I just glanced at it. There was nothing technical there that a man of this witness's standing could not testify to on direct, thus avoiding the necessity of having it read.

THE PRESIDENT: I do not see what advantage there would be if he testified in the ordinary way. You will have the report, and he may be permitted to refer to his notes. It will be a benefit to the defense.

MR. LEVIN: The difference is only as to the report. We believe we are entitled to have the witness give direct testimony.

THE PRESIDENT: How long is it?

CAPTAIN ROBINSON: About forty pages.

MR. LOGAN: It contains a number of documents. It is entirely different from the Liebert situation.

MR. LOGAN: Before the request is granted, might I suggest that your Honor examine it?

THE PRESIDENT: I will examine it. I will examine it, and I think I will refer it to my colleagues also. I do not think it will make much difference about these questions, but there are eleven of us.

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MR. LOGAN: I insist that there is. Mr. Liebert's testimony and report covered approximately 150 pages. I spoke with Captain Robinson and Mr. Levin yesterday, and saw the rough draft of the statement and what it contained, and I found it a very short report. It contains no extensive tables or statistical matter which would require

a statement to be given in the form of a report rather than the giving of direct testimony.. It is not technical in any respect, such as was revealed in Mr. Liebert's report.

Furthermore, we have here a witness who is a high ranking officer in the Navy, and who can speak English and who is of very high intelligence. We feel he should be subjected to direct examination, and that we have the benefit of the questions and to hear his answers given on the stand. We want to hear the questions directed to him by the prosecution, and to hear the answers that will be given.

Furthermore, we do not think it proper to have a witness of his standing testify from prepared notes. He should be treated as any other witness, and such notes and prepared statement should not be used.

Furthermore, we have here a report which has been prepared by the prosecution and the witness. The report has been carefully prepared and revised, and, perhaps, re-revised, after hours and days of careful thought. It is proposed that that type of evidence be introduced. We believe he should go on the stand and give the evidence on his direct examination.

On the other hand, the defense in cross-examining this man must take the answers as given by him. It has not had the opportunity that the prosecution had in preparing the report. I submit that we are relegated to the position that, when we cross-examine, we have to take the answers as he gives them. We believe that the prosecution and the defense should be placed in the same position.

Furthermore, we do not think this report is fair. It has been carefully prepared, and we urge that Admiral Richardson should be placed in the position to testify to all the facts within his knowledge.

In addition, there is contained in Admiral Richardson's report various telegrams and intercepted messages. They can be introduced separately. They do not have to be included in his report..

We sincerely feel and urge that this type of evidence should not be permitted. It is not in accordance with the method of procedure with which we are familiar in our courts.

MR. LEVIN: The Brigadier has indicated that there will be approximately fifteen documents. Those fifteen documents should be a substantial part of the evidence. Naturally, those documents can be prepared in advance, and can be tendered in



open court, and while I cannot state it now, it is probable that we would not have any objection to them as documents.

In addition, Mr. Logan has referred to the question of using prepared notes and records. The ruling of the Court is to the effect that only those notes that have been prepared at the time of the occurrence could be used. However, I assume that any notes that were made by so distinguished a man as Admiral Richardson could be used to refresh his memory.

THE PRESIDENT: We let the Professor do that.

MR. LEVIN: Yes. I have had some little experience with some of the admirals in the Navy, especially construction men, and these men knew and understood fortifications and so forth, and they require very little memoranda to refresh their memories. They are able to state, orally, facts in relation to those matters. The Admiral should have no difficulty in stating these facts by giving direct evidence. That is the proper way. It is part of our legal system, and the exigencies of this particular case require that that procedure be followed.

MR. LOGAN: Allow me to present Mr. Brannon, counsel for the defendant NAGANO, who is familiar with the matter.

MR. BRANNON: I think, Mr. President, that the difference between the former ruling and this matter is in connection with the technical and statistical nature of the report, and I do not think that the conclusions of the Admiral are of a technical nature. They are not..

CAPTAIN ROBINSON: I would like to explain further. There is the technical expression of the orders issued for the Pearl Harbor attack. It is attached to one order, and covers perhaps 100 pages. There is an analysis which deals with the deployment of Japanese technique. That is one. I could give others. It is of a technical nature, and the Admiral will discuss these matters..

MR. LEVIN: Captain, the Admiral has made this report - this report of the attack on Pearl Harbor. Certainly, it seems to me, that he would be able to testify to it on direct examination. He would be able to testify as to the events without preparing a report.

CAPTAIN ROBINSON: Mr. Logan objects to using notes. I think that this is preposterous.

He can hardly be expected to carry these matters in his memory. It is unusual. There are more than 100 pages .

BRIGADIER QUILLIAM: That is the case of an expert. An investigation of this kind having been made, he should be permitted to refer to notes. But no court will expect him to carry details in his memory, and I think it was agreed, as I understand it, that we should be permitted to refresh his memory from his notes. That is the expedient way. Any other way would be disorderly and very slow. Every time he would be entitled to look at his notes would help. I think myself that is the gravamen of the application. I suggest that the defense, and I say it with respect, are making an unnecessary objection to the prepared statement. It is technical, and we will save time in a proceeding of this kind if we do not have to ask direct questions. In a proceeding of this kind, surely that rule has no real force. If the Admiral were giving evidence of a conversation that he had ten years ago with the Japanese, or something like that where accuracy of recollection is important, it would be a different question. We have here a careful report of a man who has been in the Navy a long time. He makes that report in

going through the files in Washington to select expert material. The result should be clear. It has been done in an orderly way, and, in order that there would be no prejudice, we willingly met yesterday and showed the defense a rough draft, and we will, as soon as possible, give them a copy of of his statement.

THE PRESIDENT: Will he make a report on what he read in the files?

BRIGADIER QUILLIAM: He might read what he, the Admiral, **thinks relevant.**

THE PRESIDENT: Will he speak of his own knowledge on anything?

BRIGADIER QUILLIAM: Yes, sir, he will speak of his own knowledge. He will be able to talk on many matters, but, in particular, we have the **advantage** of having a man who can explain certain parts of the orders relating to Pearl Harbor which will be of benefit to a layman, certainly.

THE PRESIDENT: Will he be constantly referring to his report?

BRIGADIER QUILLIAM: I imagine so.

CAPTAIN ROBINSON: We request that he be permitted to read the report.

THE PRESIDENT: If these notes were not made at the time, therefore, if we apply the rules



strictly, he could not read his report. As Mr. Levin suggested, the Admiral can testify to notes made at the time of the occurrence.

MR. LEVIN: I think that, as far as that is concerned, Mr. Logan agrees with me, because I am not sure that we have no objection to the use of any notes to refresh his recollection. However, we do not now know. This man is an expert and his conclusions should be based on the information he has gathered.

MR. LOGAN: As a matter of fact, our practice and procedure is different with respect to a witness refreshing his recollection.

THE PRESIDENT: If he read a newspaper at the time of the event, he can refresh his memory from what he read.

MR. LOGAN: In the same way, since the report of the Admiral was made from investigations made by him, I do not see why he should not testify from his recollection.

THE PRESIDENT: I think that the defense will have a great advantage in having the statement in advance. It will be of value to have the report before it is read.

MR. LOGAN: That is one of the advantages which we are cognizant of, but the objection deals

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with the character and importance of it. Here, we have a report which has been prepared after weeks of careful study and thought. It is then submitted to the Court. Now, that report may include thoughts not only of this witness, but also of the prosecution. It is unfortunate that such a report should be admitted.

THE PRESIDENT: You will have it in advance. We must trust the Admiral as to what he states and what he will put in the report.

BRIGADIER QUILLIAM: You can be sure we all trust the Admiral.

MR. LEVIN: We do not question the Admiral in any respect.

MR. LOGAN: I am merely suggesting that the report is carefully phrased. There is no question about that. We do not have the same opportunity to prepare reports for the defense. We have to ask questions on cross-examination, and we must take the answers as given.

THE PRESIDENT: I do not think it is necessary to take it before my colleagues. I think the result will be the same as before.

MR. LOGAN: May I ask the prosecution to submit the rough draft to us as soon as possible?

I only looked at it for about five minutes.  
I just glanced at it. There was nothing technical there that a man of this witness's standing could not testify to on direct, thus avoiding the necessity of having it read.

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THE PRESIDENT: I will examine it. I will examine it, and I think I will refer it to my colleagues also. I do not think it will make much difference about these questions, but there are eleven of us..



MR. LEVIN: I would again emphasize that it would be much more satisfactory to hear the Admiral's testimony in his own way, by question and answer.

THE PRESIDENT: If it would not waste time, yes.

MR. LEVIN: A witness of this type would not lose time, especially if it is also translated in advance.

THE PRESIDENT: I will consider the matter.

(Whereupon, at 9:26, the hearing was concluded.)

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29 AUG

This is a corrected copy of Proceedings  
in Chambers of Thursday 29 August 1946. Please  
disregard the previous copy.

Recd listed in  
ltr 18 Oct 46  
para 2(9)